

सं... 264/2001

भारत सरकार
वित्त मंत्रालय
औद्योगिक और वित्तीय पुनर्निर्माण बोर्ड

22वां तल, जवाहर व्यापार भवन,
1, टावरस्टाय मार्ग, नई दिल्ली 110001

फोन:- 3701200

दिनांक 01-7-2002

टैलेक्स:- 031 56492

तार:- BINFIREC

फैक्स:- 3701211

सेवा में,

(संलग्न सूची के अनुसार)

विषय:-

मैसर्स जयसिंह इन्डिया लि.
के मामले। मामला संख्या 264/2001

महोदय,

मुझे दिनांक 18-6-2002 की कार्यवाही/आदेशों की प्रमाणित प्रति आपको सूचना तथा आवश्यक कार्रवाई के लिये भेजने का निदेश हुआ है।

भवदीय,



(सूचक के गुप्ता)

सूचक अधिकारी-॥

संलग्नक. १. शीत



BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION

CASE NO.264/2001 RE.: JAYSYNTH DYECHEM LTD.

BENCH-II

THE SUMMARY RECORD OF THE PROCEEDINGS OF THE HEARING HELD ON
18.6.2002 BEFORE S/SHRI G.NARAYANAN AND N.P.BAGCHEE, MEMBERS.

Present	S/Shri/Smt.
Jaysynth Dyechem Ltd.	Mahendra.K.Kothari Pankaj.K.Kothari S.K.Jain Alok Dhir, Advocate Nilesh Sharma, C.A.
IDBI	Reji John, IDBI
IDBI Bank	Amit Mathur, Manager
State Bank of India	S.R.Singh, AGM
Bank of India	N.Narayana Murthy, Chief Manager
Bank of Baroda	Smt.P.Kapila, Manager
Exim Bank	Sanjeev Pawar, Manager
Unit Trust of India	D.K.Singh, Manager
ICICI	Ms.Shubha Godbole, C.M.

Jaysynth Dyechem Ltd. (JDL) has filed a reference under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'the Act'), which was taken up in today's hearing for determination of the sickness. It is noted from the Form-A and other papers filed by the company that it was incorporated in the State of Maharashtra on 5.10.73. The company owned two factories located at Thane (unit-1) and Raighad (unit-2). The company was engaged in manufacture of dyestuffs, which is an activity covered under item no.21 of Schedule-I of Industries (Development and Regulations) Act, 1951 (IDRA). The company employed 657 workers in the company. The



unit-1 of the company had been under lock out since 7.6.2000 and the unit-2 was working. The company commenced commercial production in 1974 and had stated competitive dye market, economic scenario, inflexible labour laws/policies, high interest cost and taxes as the main reasons of its sickness. As per the Audited Balance Sheet (ABS) of the company as on 31.3.2001, its net worth was Rs.5580.60 lakhs consisting of paid up share capital of Rs.1325.00 lakhs and free reserves of Rs.4255.60 lakhs. The entire net worth eroded on account of the accumulated losses of Rs.5943.97 lakhs. The investment in plant and machinery was Rs.10718.93 lakhs.

2. The Board asked the representative of the company whether any changes were required in the Form-A. He stated that no changes were required in the Form-A and correct information had been submitted to the Board. On being asked whether there was any stay in the High Court for BIFR's hearings based on the writ petition filed by association of chemical workers in the Mumbai High Court (MHC), he stated that there was no stay of High Court in this regard and others present also confirmed that there was no stay against the proceedings of BIFR.

3. The representative of IDBI, Shri Reji John stated that they had no objection to the sickness of the company.

4. The representative of Bank of India (BOI), Shri M.Naryanana Murthy stated objection to the sickness of the company. He stated that the company had followed inconsistent accounting practices for the last three years and the losses had been apparently inflated with a view to reflect complete erosion in net worth. He stated that the loss for the years 1999-2000 and 2000-01 had been grossly inflated by the company. The percentage of variable cost as well as fixed costs to total income had gone up

disproportionately over the last five years. The company over the years had increased its investments/advances to associate companies/other sister concerns and the same had proved a drain on the company's resources. These resources should have been utilised to bring down the debt burden of the company. The company had also not been observing financial discipline expected of them and there had been excessive demerit in value of securities charged to the bank over the past six months without commensurate decrease in borrowings of the bank. The company deliberately had not routed the export proceeds through the bank accounts. The company had also sublet part of its Worli premises office charged to the consortium bank without prior consent of the lenders. The promoters had categorically stated that they were unable to infuse any funds in the unit for its revival. As such neglected the unit and without contribution from promoters, no rehabilitation package could be drawn up.

5. Shri Murthy further stated that one of lenders and a consortium member i.e. SBI had already served a recall notice on the company. In view of the foregoing, he requested the Board to dismiss the present reference of the company and grant permission to the bank u/s 22(1) to initiate legal action against them.

6. The representative of State Bank of India (SBI), Shri S.R.Singh stated that they had submitted their observations vide their letter dated 23.1.2002. He stated that the conduct of the accounts with them by the company was highly unsatisfactory. The company had not been submitting the stock statements in time and no stock statement had been sent after September 2001. In view of the above, approval be granted to SBI to start legal proceedings in DRT against the company/guarantors.



7. The representative of Exim Bank, Sanjeev Pawar stated that they had submitted their observations vide their letter dated 23.4.2002. He stated that the company had undertaken massive expansion programme over the last four years, which had not fetched any returns but instead there had been an additional burden on account of interest and foreign exchange fluctuation. The change in the method of valuation of closing stocks during 1998-99 resulting in loss was basically to comply with the Accounting Standard (AS)-2. However, writing off of export benefit receivable (EBR) amounting Rs.1.109.47 lakhs, bad debts of Rs.233.62 lakhs during 1999-2000 and Rs.180.37 lakhs during 2000-01, provision for diminution in investment of Rs.138.06 lakhs and for retirement benefits of Rs.346.90 lakhs during the last two years appeared to have been done with a view increasing loss and show the net worth negative. He also added that the company had accelerated the amortisation period of deferred revenue expenditure on Research and Development from 5 years to 3 years which appeared to have been done solely with a view to increasing loss. There was sudden spurt of 115% for repairs and maintenance during 1999-2000, though the capacity utilisation had declined significantly to 56%. There was a quantum jump in raw material consumption from around 69% during 1999-2000 to 81% during 2000-01 as a percentage of sales though capacity utilisation had been on decline. During 2000-01, the company incurred a loss of Rs.6665.54 lakhs. It had invested Rs.700 lakhs in another group company viz. Jaysynth Dyestuff India Ltd. (JDIL). As per the information available in the Form-A, even JDIL incurred losses of Rs.525.11 lakhs and Rs.665.45 lakhs during 1998-99 and 1999-2000 respectively. It was also observed that during 1998-99, the company had repaid unsecured loan of Rs.105.61 lakhs obtained from Directors/promoters whereas secured loans from institutions/banks were increasing. In view of the above, the bank had lost confidence and faith in the management of the company and since the company had approached the Board to avoid legal action by creditors for recovery of their dues by seeking protection under SICA, the Board should

reject their reference and permit the bank to initiate legal action against the company/guarantors.

8. The representative of UTI, Shri D.K.Singh stated that he was not fully briefed about the points regarding sickness of the company.

9. The learned Counsel for the company, Shri Alok Dhir stated that the dyes and chemical industry was facing severe crisis due to recession in the country as well as in the international market but with the agreement with the labour unions, there would be reduction in the cost of labour and the demand of the company's product would improve. The company was fully viable. However, certain reliefs and concessions from various parties were required to improve the viability of the company. He stated that the observations made by BOI were general in nature and they had not provided any argument/evidence as to why the amounts involved in their observation should be disallowed for computing the revised net worth of the company for the purpose of determining sickness or which accounting policies/standards were not followed/complied with by the company while preparing its audited annual accounts. Moreover, the company had replied to all the queries raised by BOI from time to time.

10. In regard to Exim Bank's objections for opening and closing stocks, Shri Dhir stated that both were valued at selling prices and this had not resulted in much impact on the profitability of the company in any single year. The financial statements of the past years were comparable and reliable since they were made on the basis of accounting policy followed consistently and properly disclosed. He stated that the change in the accounting policy regarding amortization of research and development expenditure resulted in additional charge of Rs.94.96 lakhs during the year and not Rs.270.38 lakhs as alleged by



the Exim Bank. The company had incurred a sum of Rs.712 lakhs during 1996-97 and 1997-98. Earlier it was decided that this amount would be written off over a period of five years from the year of commencement of commercial production. However, as the sales of newly developed products were not picking up, therefore, the company decided to amortize the R&D expenditure over a shorter period of three years instead of five years as the commercial benefit of these products would not be derived for long.

11. Shri Dhir also stated that the present reference was based on the audited annual accounts of the company for 31.3.2001 whereas this change in accounting policy was made in 1998-99. During these last two years, none of the secured creditors including Exim Bank raised any objection/sought any clarification on change in accounting policy. The accounting policy was in conformity with the provisions of AS-8 and reflected true and fair picture of the accounts of the company. He also stated that the objectives appeared to be mere afterthought objectives.

12. In regard to writing off of export benefits amounting to Rs.1109.47 lakhs, Shri Dhir stated that these benefits were not in the nature of receivables but the same were notional in nature which were to be encashed by the company by importing duty free raw materials which could not happen due to some circumstances. The company, therefore, did not have any other option but to write it off in order to present a true and fair picture of the accounts of the company. Further, as these benefits were booked as income in the earlier years, by reversing the same in 1999-2000, there would not be any impact on the net worth of the company. He stated that the company had given adequate disclosure in respect of the same in the notes to the accounts forming part of the balance sheet of the company much earlier in the year ended 31.3.99. He stated that in note no.15, 16 and 17 of the Form-A, the explanation for advance license benefit amounting to Rs.866 lakhs had

realisation to the extent of Rs.5.25 lakhs had been explained. Similarly pass book benefits receivables amounting to Rs.179 lakhs as doubtful for realisation had been explained in note no.16 and premium receivable on value of special import license shown as Rs.94 lakhs for the year 1997-98 had been realised only to the extent of Rs.13 lakhs had been explained in note no.17. He stated that the accounts for 1999-2000 had been given to all the secured lenders and none of them raised any objection on the same at that time. It was not clear why they were raising objections now.

13. Further considering the judgement passed by Hon'ble AAIBP in the matter of M/s.Krimpex Synthetics Ltd. (KSL) and a statement on the MAOCARO issued by Institute of Chartered Accountants of India (ICAI), the said write offs were required to be considered as a part of loss without there being actual write off since unprovided liabilities with respect to which the auditors had qualified their report should be considered as part of loss in deciding about the sickness of the company. In regard to write off of bad and doubtful debts for Rs.233.62 lakhs during the year 1999-2000, he stated that the amount of write off/provision worked to only 1.53% of the turnover of the company which was not very significant and normal in the industry. Most of these debtors were overdue for more than three years and the company had made all the efforts to recover these amounts. He stated that the Reserve Bank of India (RBI) permitted the authorised dealers to allow write off of export, bad debts upto 10% of the export proceeds realised during the calendar year. The amount of export debtors written off by the company was much below the ceiling of 10% prescribed by the RBI. Moreover, none of these debtors which had been written off were related to the promoters of the company.

14. In regard to increase in repairs and maintenance, Shri Dhir submitted that the expenditure on repairs and maintenance was less than 1% during last three years which



was much lower than acceptable norm of 2-3% in the case of dyes industry where corrosion was much higher as compared to other industries. He stated that the expenditure incurred by the company for repairs and maintenance in 1996-97 and 1997-98 if compared with the expenditure incurred during 1999-2000 could not be considered on higher side. In regard to increase in raw material consumption, he stated that the percentage mentioned by Exim Bank was not correct.

15. He further stated that in the Form-A against question no.31 that the raw material percentage to output was in 1997 was 61.93%, in 1998 62.89%, in 1999 58.43%, in 2000 59.02% and in 2001 53.05%. Therefore, the contention of Exim Bank in this regard was not based on factual position, disclosed in the Form-A. In regard to investment in associate and group companies, Shri Dhir stated that the company made additional investment of Rs.336 lakhs in Jaysynth Anthraquinones Ltd. (JAL) during 1999-2000. The company subscribed to 24 lakhs shares at rate of Rs.140 per share (i.e. at a premium of Rs.40 per share). Further, during 2000-01, it had invested Rs.700 lakhs in another group company viz. JDIL. He stated that this investment was necessary to retain the company's market share in the international market in general and in particular USA market. Moreover, NOCs from all secured creditors were taken for investment of these funds in the foreign subsidiary and the company had infused fresh funds to the extent of Rs.2.81 crores during the last three years by way of investment in subsidiaries/associates, advances to subsidiaries/associates and the company made an investment of Rs.8.51 crores in Dypharben USA Inc. its wholly owned market subsidiary during the year 1998-99 and 1999-2000. He also stated that JDIL was a group company and was floated to diversify into the field of manufacturing copper phthalocyanines which product was conducive to the market growth of the group. The said project was implemented by JDIL during the years 1993-94 at the instance of the lenders. It should also be noted that very negligible increase in the outstanding of JDIL

was there during the last three years. The subscription to the preference shares of JDIL by the company had not resulted in any cash outflow. In regard to the loans and advances of Rs.1394 lakhs, the necessary details and breakup had been given to the bank and it may be noted that all the loans and advances aggregating to Rs.1394 lakhs were routine in nature and had been made in the normal course of the business. He stated that since the all India institutions had no objection to the sickness of the company, the Board should declare the company as sick so that the necessary rehabilitation process could be started.

16. Shri Dhir also agreed on behalf of the company to appoint IDBI as the Operating Agency (OA) and also to pay the fee in this regard.

17. After hearing the submissions of all concerned and the material on record, the Board was satisfied and came to the conclusion that the company had become sick in terms of section 3(1)(o) of the Act.

18. IDBI was appointed as the Operating Agency u/s 17(3) of the Act to prepare a rehabilitation scheme for the company keeping in view the following 'Guidelines'.

Guidelines

a) Either through in-house expertise or by engaging the services of a well qualified and experienced technical consultant from the same industry line, a detailed techno-economic viability study should be conducted keeping in view the current industry profile as well as perspective for the next 5-7 years with appropriate demand forecasting and taking into account competition faced from other units. An end-to-end survey of the plant be conducted for ascertaining the state and condition of the plant. Following aspects be also looked into in the scope of study :-

i) Along with thorough scrutiny of past operations of company, industry level scenario be presented taking into account the aspect of capacities installed and achieved along with Demand Supply position of products manufactured.



- ii) The need for well operated production facilities.
- iii) In order to update the existing infrastructure the requirement of balancing equipments, arrears of repairs and maintenance and sifting of pressing creditors and liabilities be considered.
- iv) Contribution analysis keeping in view the past track record and comparing the same with the trends prevailing in the industry line.
- v) For the existing and proposed capacity, need for well operated production facility should also be evaluated in relation to firmed up capital cost involved therein keeping in view the delivery schedule and other related issues.
- vi) Technical feasibility and the achievable technical output and what further needs be done for capital outlay to reach the technical output.
- vii) Interest rate structure as agreed to by all concerned be accounted for. Also the depreciation be accounted for in terms of law/accounting procedure.
- viii) Then to assess the commercial and financial viability. Sensitivity analysis be conducted on different parameters with variable factors keeping in view the past trends of variations noticed in the activity of the company and those to which the industry line was more susceptible.
- ix) Past track record of operations of the company in terms of physical and financial performance be studied in depth with a focus on management aspects. The capabilities of the present management to provide the requisite kind and level of management inputs and the financial capabilities should receive meticulous attention.
- b) After ascertaining whether the company on its own would be able to service debts from the value of sale output and if the generations are not adequate enough to work out the kind of reliefs/concessions required. The reliefs/concessions should be worked out within the RBI parameters. In the case of ESI/PF, State/Central Govt. matters, they should be in terms of policy frame work/parameters laid down. The extent of interest free funds required to meet the shortfall, if any, in DSCR despite such reliefs/concessions should also be quantified. For DSCR 1.33 may be considered the minimum acceptable level. For meeting the aforesaid shortfall, the time frame be indicated for induction of financial inputs and the mode thereof.
- c) The promoters' contribution towards the cost of the scheme should also have linkages with the monetary value of sacrifices which should be 30% of both the components. The sources and time frame for induction of such funds alongwith modalities thereof be clearly spelt out.
- d) The scheme should indicate the reliefs/concessions required from the banks, Fls, Government, workers and others separately and the same may be quantified, detailing the extent of sacrifices by each.

e) Details of reliefs under different relevant provisions of Income Tax Act be worked out separately. Tax effect so arrived at should be shown separately as well. Any exemption u/s 41(1) or under other sections of the Income Tax Act, 1961, if provided, would have to be substantiated and separate working be presented in case of its availability or otherwise.

f) Consensus be arrived at regarding working capital needs along with method of lending, quantification of irregular component and other connected issues like margin requirement, level of inventory holding, level of finance as per latest credit policy of RBI.

g) Special attention be paid to the aspect of managerial competence of the promoters and the executive level suggesting improvements therein or any other related remedial measures. These should be clearly spelt out.

h) To take into account the contingent liabilities, statutory liabilities, if any, that are likely to crystallize along with arrears of depreciation, if any.

i) The period of revival should not be more than 5-6 years.

j) The company should turn their net worth positive in a period not more than 2-3 years and they should also wipe out their accumulated losses within 5-6 years.

k) Efforts should be made to hold meetings, discussions with all concerned parties including FIs/banks, promoters, State Government and major creditors so as to know their suggestions/reactions and arrive at some sort of a consensus, if possible, in order to avoid delay in the matter. The submission of the report should be preceded by usual joint meeting.

l) Any other supplemental/incidental or consequential matter in order to secure the needed revival of the company may be considered.

19. The Bench further directed as under: -

- a) The OA should conduct an in-house study regarding the supply and availability of the raw material, national and international competition in the market, environmental issues involved and any diversification of products, which the company was proposing to improve their market share.
- b) The company should submit their acceptable, viable, fully tied up and comprehensive rehabilitation proposal within a period of six weeks to the OA with copies to all concerned.

- c) The company in their proposal should also indicate clearly the availability of additional funds for rehabilitation and they should also frame their proposal based on the technical study done by IDBI in this regard, copy of which was submitted to the company by IDBI.
- d) The company should give in their proposal the names and addresses of all central/state government authorities (like sales tax, CBDT, DGFT, land development authority, income tax, water authority etc., wherever applicable), concerned department of Central/State Government, banks, financial institutions etc. from whom reliefs/concessions are sought in their proposal under the Act, clearly indicating reliefs and concessions to be provided by them also.
- e) The OA on receipt of such a proposal of the company should consider the same in a joint meeting of all concerned by circulating the agenda papers to all concerned. If any viable, acceptable, proposal would emerge in the joint meeting, they would formulate the DRS of the company and submit the same to the Board along with minutes of the joint meeting to the Board within next four weeks with copies to all concerned.
- f) In the event the company failed to submit their acceptable and viable proposal within six weeks to the OA as stated above, the OA should inform the Board immediately with copies to all concerned. The Board on receipt of such an information from the OA would consider other alternatives with a view to rehabilitate the company expeditiously including change of management of the company.
- g) The cut off date would be 31.12.2002.
- h) The company should also submit their audited balance sheet for the year 2002 to the OA with a copy to the Board.

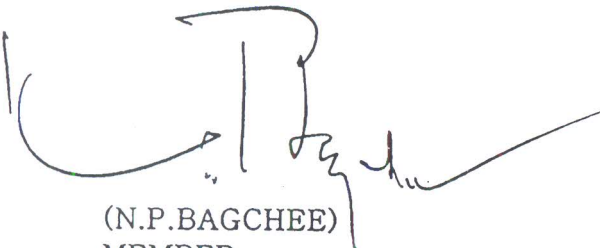


- i) The company should not dispose of or alienate in any other way any of its fixed assets and current assets without specific prior approval of BIFR and the chargeholders u/s 22A of the Act. However, in case the unit was working, the current assets could be utilised for running day to day operations subject to keeping proper records thereof and routing all transactions through the account with the company's financing bank(s) only.

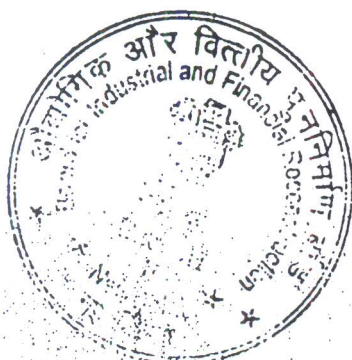
20. Since the rehabilitation proposal of the company was under consideration, the Board did not permit the secured creditors and banks regarding instituting any legal action against the company in terms of Section 22(1) of the Act. However, they could give a copy of their request in this regard to the company and others. The company and others could reply to the same within ten days with a copy to the Board and others. The others could also submit their rejoinders within ten days with a copy to the Board.

21. The banks could also appoint one representative as nominee Director on the Board of the company in terms of their documentation and they should also inform the name of such a nominee Director along with address to the OA, company and to the Board.

22. The Board would decide further in this regard on receipt of communication of all.



(N.P.BAGCHEE)
MEMBER


(G.NARAYANAN)
MEMBER



Certified True Copy

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Secretary
Board for Industrial and
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DATE OF ISSUE
2002

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